

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 22, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 213, HB 521, HB 496,
3/19/2001
Executive Action: SR 21, HB 214, HB 66

HEARING ON HB 213

Sponsor: REP. BRAD NEWMAN, HD 38, BUTTE

Proponents: Mike McGrath, Attorney General
Judy Wang, Assistant City Attorney, Missoula
Marty Ludemann, Captain, City of Missoula Police
Department
Troy McGee, MT. Chief Police Association

**Ann Gilkey, Supreme Court Assessment Program
Wayde Cooperider, Deputy Sheriff, Lewis & Clark
County**

Opponents: None

Opening Statement by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, stated this bill is to uniform state enforcement of domestic violence protection orders. He felt protection does not extend pass limits and should not stop at boundaries. He talked about the percentage of woman who receive domestic abuse and go for treatment. He felt there needed to be stronger legislation and this bill would add uniformity for law enforcement to respond to these protective orders.

Proponents' Testimony:

Mike McGrath, Attorney General, said to look at situations from other states to be important procedures. He felt uniform state laws could be legally enforced. He said this bill would allow law enforcement an opportunity to respond. He explained sections of the bill in assisting protection and the provision allowing to register orders of protection on a national basis.

Judy Wang, Assistant City Attorney, Missoula, handed in her testimony **EXHIBIT(jus65a01)**.

Marty Ludemann, Captain, City of Missoula Police Department, said this bill offers the tools for the police department to do its job. He mentioned incidences and the need for the order of protection.

Troy McGee, Mt. Chief of Police Association, urged a do pass of this legislation. He felt this bill would offer assistance with difficult calls in these areas.

Ann Gilkey, Supreme Court Assessment Program, expressed the problem across state boundaries. She said this bill would benefit the state. She mentioned language changes in the bill and how courts need to enforce the orders.

Wayde Cooperider, Deputy Sheriff, Lewis & Clark County, urged support of this bill and recommended a do pass legislation.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES referred to a probable cause issue from Section four and wondered if that was too loose, allowing someone to be incarcerated when a restraining order was not issued. **REP.**

NEWMAN said these are the same amendments from House Judiciary and from the House floor. He explained current language and said this is the legal standard for a police officer to use. He said the situation deals with the potential of a particular person, who may be arrested wrongfully if an order did not exist.

{Tape 1; Side B}

SEN. GERALD PEASE asked how this interacts with tribal governments. **REP. NEWMAN** said the Montana court system or a police officer should be able to enforce this within tribal courts. He pointed out the jurisdiction legalities and protection issues, but felt this bill would enhance those issues.

SEN. PEASE referred to Montana reservations and treaties and he asked how this bill would effect that. **REP. NEWMAN** did not think it would have any effect with this bill.

SEN. JERRY O'NEIL asked about a temporary custody order. **Mike McGrath** explained how a custody order from another state is enforced.

SEN. GRIMES asked to address the tribunal issue. **REP. NEWMAN** mentioned page two of the bill and explained the language.

SEN. GRIMES wondered if a valid protection order from another state was not entered, what type of position are the police officers in if it is not implemented. **REP. NEWMAN** said the concerns of this issue can be found in Section four of the bill. He explained the police officer's enforcement to find the official confirmation of the order.

SEN. GRIMES asked the votes on this bill from the House. **REP. NEWMAN** believed the vote to be 90 to 10.

SEN. O'NEIL asked if the order was registered on a certain computer system could the police officer pull the order and read it. **REP. NEWMAN** didn't believe officers could receive all of the information and immediately access it.

SEN. O'NEIL asked when the order was registered, wouldn't there be copy of the order. **REP. NEWMAN** said there wouldn't be a full copy of the entire order.

Closing by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, summarized the need to have uniformity of protection. He urged support of this bill.

HEARING ON HB 521

Sponsor: **REP. BRAD NEWMAN, HD 38, BUTTE**

Proponents: **John Connor, MT. County Attorneys Association**

Opponents: **None**

Opening Statement by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, gave examples of sentencing enhancements in criminal codes. He expressed the enhancement of the penalties system in this bill. He said due process concerns with the defendant could become an issue.

Proponents' Testimony:

John Connor, Mt. County Attorneys Association, explained a case dealing with hate crime. He mentioned the problems using the enhancement statutes and what the law requires. He felt this bill would be appropriate to use.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. O'NEIL asked about the separate element of offense. **John Connor** explained the differences of the offenses. He said proof of the underlying facts of the enhancement should be presented to the jury.

{Tape 2; Side A}

CHAIRMAN GROSFIELD pointed to page two of the bill and asked if sentencing enhancements were on the books. **John Connor** answered yes, they are on the books and he said who drafted the bill and how broad it is to include enhancements in the future.

CHAIRMAN GROSFIELD asked what line ten refers to. **John Connor** said it refers to subsequent statute providing for enhancement due to a monetary loss.

CHAIRMAN GROSFIELD asked what the monetary value refers to. **REP. NEWMAN** didn't have an answer to that issue. He explained a crime

of a certain amount causing penalties, the enhancement would be in existence.

CHAIRMAN GROSFIELD asked if there should be an exclusive list.

REP. NEWMAN said this list was narrow and not very broad. He said the enhancing factor offers burdens on the state to plead and prove the existence factor.

CHAIRMAN GROSFIELD asked if this would provide notice or not.

REP. NEWMAN said this process needs to be modified.

SEN. O'NEIL asked if it would be a sentence enhancement if an offender did a similar crime before. **REP. NEWMAN** said Montana Law allows for enhanced penalties for persistent felony offenders.

SEN. O'NEIL asked if it should be included within this bill.

REP. NEWMAN said there was already a statutory procedure for seeking and obtaining the persistent felony offender information.

Closing by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, summarized the bill and urged support of this bill.

HEARING ON HB 496

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Mike Moore, Attorney, Missoula**
Tom England, Owner Collection Agency, Helena
Bob Pyfer, Executive Vice President, MT. Credit Unions
Cecil Hawkins, Reverend, Billings
Kevin Moser, President, MT. Collection Association
Steve Wade, MT. Collectors Association
Tom Ellis, District President, Wells Fargo Bank
George Bennett, Attorney, MT. Bankers Assoc.
Wayde Cooperider, Deputy Sheriff, Lewis & Clark County

Opponents: **Richard Rowe, Process Server and Levying Officer, Missoula**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, said this bill allows out of town councils available for trials. He explained clarification of the bill and talked about contract entities, which provides and modifies the codes. He pointed out sections of the bill and went through each. He handed out proposed amendments for the bill **EXHIBIT(jus65a02)**.

Proponents' Testimony:

Mike Moore, Attorney, Missoula, handed out another proposed amendment **EXHIBIT(jus65a03)** and letters of support **EXHIBIT(jus65a04)**. He talked about the depositors due process rights being protected and gave background of this issue. He mentioned Section nine and how the bank's perspective was used on a levy. He felt the notice of procedure was important.

{Tape 2; Side B}

Tom England, Owner Collection Agency, Helena, urged support of this legislation. He supported the proposed amendments and agreed with proponents statements.

Bob Pyfer, Executive Vice President, MT. Credit Unions, supports this bill and felt it enhances the collection process. He was concerned about the two day return time and it may be difficult with the process. He said potential liability would be considered by holding funds.

Cecil Hawkins, Reverend, Billings, explained courts he had visited and the costs incurred. He felt this bill would assist the system with funds needed. He supported the amendment for the bill and asked for a do pass motion.

Kevin Moser, President MT. Collection Association, supports this bill.

Steve Wade, MT. Collectors Association, urged to concur on this bill. He agreed with the amendments.

Tom Ellis, District President, Wells Fargo Bank, objected to the amendments and expressed his concern. He explained the burden due to the person being levied against. He likes the original language in the bill and asked for support of that legislation.

George Bennett, Attorney, MT. Bankers Association, handed in his testimony **EXHIBIT(jus65a05)**.

Wayde Cooperider, Deputy Sheriff, Lewis & Clark County, felt the amendments to be controversial. He didn't agree with Section

nine of the bill. He addressed issues to consider by leaving the current language in. He expressed the collections department should be trained to know procedure. He did support the existing language of the bill.

Opponents' Testimony:

Richard Rowe, Process Server and Levying Officer, Missoula, handed out a list of levies **EXHIBIT(jus65a06)**. He talked about the levies done throughout the year. He stated the practical aspects of service and process and how this bill would effect it. He said they cannot mail all levies out to be served because some of the main offices are out of state. He didn't think the bill was written well and did not offer protection to the departments involved.

{Tape 3; Side A}

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked to respond to issues from Section nine. **Mike Moore** said the legislation would be bad without the proposed amendments. He said a levy is another procedure to seize funds of a debtor. He would like the mailing ability as part of the law.

SEN. HALLIGAN asked the sponsor for response and to the officer's issues pertaining to Section nine. **REP. JENT** felt by striking the whole section it would take out considered choices.

SEN. GRIMES mentioned the concerns brought to the legislature and the title was broad enough to be decided upon.

SEN. HALLIGAN asked for accomplishments to the existing law. **Cecil Hawkins** talked about civil action coming from Deer Lodge. He talked about additional lawsuits coming out and felt there should be a way to curtail this and set a foundation.

SEN. O'NEIL questioned the title of the bill and asked if district courts limit this action. **REP. JENT** said the new section amends the justice and municipal courts of procedure.

SEN. O'NEIL asked about the new section and its direction of drafting. **REP. JENT** pointed to the last section of the bill and explained the drafting.

SEN. GRIMES asked if they would not be amending Section nine. **George Bennett** said they opposed the striking of Section nine because it is indirectly sanctioning service by mail.

SEN. HALLIGAN asked how to allow for the mailing option. **George Bennett** said they tried to work with the debt collectors and the problems were not addressed dealing with mail services.

SEN. HALLIGAN asked if debt collectors are subject to a lawsuit. **George Bennett** said the judgement debtor could sue.

SEN. HALLIGAN felt the issue of the separate amendments could become a problem with this bill.

{Tape 3; Side B}

SEN. GRIMES added the concern raised, after the date, that this bill and amendments could have been introduced. He asked if the amendments cause more workload. **Bob Pyfer** answered adequate identification should be obtained of the judgement debtor. He didn't think there would be problems with striking sections as needed.

SEN. GRIMES asked if there was concern dealing with serving a notice on everyone. **Bob Pyfer** said this is not a problem. He understands the view of large notices especially if they are not customers of the institution.

SEN. GRIMES asked what the House hearing was like and thought a subcommittee may be needed. **REP. JENT** said it was an extensive hearing and added the results were the amendments.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, explained the process of the bill and tried to clarify the drafting of the bill. He addressed the amendments dealing with the prison issue. He asked for support of this legislation.

EXECUTIVE ACTION ON SR 21

Motion: **SEN. RIC HOLDEN** moved **SR 21 DO PASS**.

Discussion:

SEN. HOLDEN felt **Judge Todd** was respected and had good credentials.

SEN. O'NEIL looked through credentials of **Judge Todd** and felt he would be a good candidate.

CHAIRMAN GROSFIELD added many questions were given to **Judge Todd**. He felt impressed by the discussion in the hearing and how **Judge Todd** presented himself.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 214

Discussion:

CHAIRMAN GROSFIELD said executive action on this bill began in the hearing the day prior. He mentioned the amendments from **SEN. HOLDEN EXHIBIT (jus65a07)** and keeping the motion open for discussion and vote.

Vote to Amend HB 214 from Executive Action of 03/21/01: Motion HB 214 BE AMENDED carried 5-4 with **SEN. DOHERTY, CHAIRMAN GROSFIELD, SEN. HALLIGAN,** and **SEN. PEASE** voting no.

Motion: **SEN. HOLDEN** moved HB 214 BE CONCURRED IN AS AMENDED.

SEN. HALLIGAN felt this may come back in a conference committee and more action would have to be taken on the bill.

CHAIRMAN GROSFIELD felt a need for more judges as designed within the bill. He didn't think the House would approve this bill.

SEN. HOLDEN disagreed with the chairman dealing with House members mentioning fears of this bill.

Vote: Motion carried 7-2 with **SEN. HALLIGAN** and **SEN. DOHERTY** voting no.

EXECUTIVE ACTION ON HB 66

Discussion:

CHAIRMAN GROSFIELD asked about issues pertaining to this bill. He thought this bill would put legislative services division in a position of having to do extra workloads. **Greg Petesch, Code Commissioner, Legislative Services,** explained how this bill would effect the staff of the legal division. He talked about the types of review and he felt it to be subjective.

{Tape 4; Side A}

Motion: SEN. HOLDEN moved HB 66 POSTPONE INDEFINITELY.

SEN. HOLDEN felt this bill would be costly. He mentioned the proponents who testified on the bill and he didn't agree with these issues. He said a repealer should be allowed to be brought in.

SEN. O'NEIL wondered if the code commissioners office had the authority to bring these items to the committee's attention under the current existing situation. CHAIRMAN GROSFIELD said some may be objective and others subjective. He explained the code commissioner does bring forth information regarding the legislature addressing an issue.

SEN. BISHOP asked if after the session does anyone go over these bills to check for logic, inconsistencies or if they are unconstitutional. Greg Petesch said they give advice for constitutionality and are required to deal with each bill that is enacted.

SEN. BISHOP asked if this bill would have them looking backwards instead forwards. Greg Petesch answered only by intentional conduct.

Vote: Motion carried unanimously.

ADJOURNMENT

Adjournment: 11:55 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus65aad)